

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

COMMUNITY BANK, DESOTO COUNTY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:02CV251-P-A

**MARTIN E. COOPER, JR.,
COOPER GLASS COMPANY, LLC, AND
C AND R HOLDING COMPANY, LLC**

**DEFENDANTS AND
THIRD-PARTY PLAINTIFFS**

VERUS

MARK BARTLETT

THIRD-PARTY DEFENDANT

ORDER

This cause is before the Court on the Third Party Plaintiffs' Motion for Summary Judgment Against Third Party Defendant [107-1]. The Court, having reviewed the motion, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit;

Third party plaintiffs Martin E. Cooper, Jr., Cooper Glass Company, LLC and C and R Holding Company, LLC seek summary judgment on their contribution claim against third party defendant Mark Bartlett. They ask the Court to enter an order adjudging Bartlett liable for the entirety of the judgment against them, excepting only that portion of the Court's Partial Final Judgment dated March 13, 2006 in the amount of \$6,739.25 pertaining to Loan Number 6500037.

Third party plaintiffs cite only one case in support of their contribution claim. Williams v. Owens, 613 So.2d 829 (Miss. 1993), stands only for the proposition that "co-makers of a note are liable for an equal share of a debt, even though each is liable for the full amount under joint and

several liability.” Id. at 835. Further, “the right of contribution among co-makers of a note is the same as that which exists among partners. ‘When one co-maker pays the instrument he is entitled to contribution from other co-makers.’” Id. (quoting from White and Summers, Uniform Commercial Code § 13-6 (3d ed. 1988)).

Upon the authority of the above-cited case, the Court finds that Martin E. Cooper, Jr. has a valid claim for contribution as against Bartlett since both gentlemen were co-makers of the note in question. However, Cooper does not merely seek contribution for having paid more than his allocable share of Loan number 650095 as supported by the Owens decision; instead, he seeks to shift the burden in its entirety to Bartlett based on the argument that Bartlett’s dealings as a principal in the Car Lot, LLC render him more culpable than Cooper. This argument is unavailing where the controlling principles of law are based on contract, rather than tort.

Accordingly, the Court concludes that Cooper may recover fifty percent of the sum expended to satisfy the Court’s March 13, 2006 judgment with regard to Loan number 650095 in the principal amount of \$235,000.00 plus prejudgment and post judgment interest through the date of actual payment, as well as reasonable attorney fees, expenses and costs of the action. Cooper remains individually liable for that portion of the Partial Final Judgment pertaining to Loan Number 6500037, including prejudgment and post judgment interest, reasonable attorney fees, expenses and costs of the action.¹

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Third Party Plaintiffs’ Motion for Summary Judgment Against Third Party Defendant [107-1] should be, and hereby is, GRANTED

¹ The brief in support of the Motion for Summary Judgment fails to address any legal and/or factual basis for a claim of contribution by Cooper Glass Company, LLC and C and R Holding Company, LLC against Bartlett. The Court therefore finds that the motion should be denied with regard to their separate claims for contribution, if any.

IN PART AND DENIED IN PART. IT IS FURTHER ORDERED that third party plaintiff Cooper should be, and hereby is, entitled to CONTRIBUTION from third-party DEFENDANT Bartlett of one half of any sums expended by Cooper in satisfaction of the judgment debt on Loan Number 650095. IT IS FURTHER ORDERED that the third-party plaintiffs are to submit a proposed Judgment within ten (10) days of the entry of this Order.

SO ORDERED, this the 26th day of June, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE